

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CHRISTOPHER McSWAIN,

Plaintiff,

Case No. 05-C-1144

v.

PHIL KINGSTON, *et al.*,

ORDER

Defendants.

Plaintiff Christopher McSwain, who is proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 and has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Pursuant to the Prison Litigation Reform Act (PLRA), the plaintiff is required to pay the statutory filing fee of \$250.00 for this action. *See* 28 U.S.C. § 1915(b)(1).

By order dated December 6, 2005, the plaintiff was ordered to forward to the clerk of court by December 27, 2005, the sum of \$21.00 as an initial partial filing fee in this action. The plaintiff was advised that, upon payment of this fee, the court would determine whether the action can proceed *in forma pauperis*. To date the plaintiff has not paid this partial filing fee. From this failure to pay the initial filing fee this court infers that the plaintiff no longer wants to prosecute this action. Therefore, the court will dismiss this case without prejudice.

NOW, THEREFORE, IT IS ORDERED that this action be and hereby is dismissed without prejudice for failure to prosecute.

IT IS FURTHER ORDERED that this dismissal will not be counted as a "strike" under 28 U.S.C. § 1915(g).

IT IS ALSO ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Green Bay, Wisconsin, this 31st day of January, 2006.

BY THE COURT:

s/ William C. Griesbach
William C. Griesbach
United States District Judge